

# **EXHIBIT A**

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SUPERIOR COURT OF CALIFORNIA  
 FOR THE COUNTY OF LOS ANGELES  
 UNLIMITED JURISDICTION

MATTHEW TREINISH, individually, and  
 on behalf of all others similarly situated,

Plaintiff,

vs.

IFIT INC. d/b/a NORDICTRACK and  
 DOES 1-10 Inclusive,

Defendants.

Case No. **22STCV18798**

**CLASS ACTION COMPLAINT**

- (1) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*);
- (2) Breach of Warranty in Violation of Song-Beverly Consumer Warranty Act (Cal. Civil Code §§ 1790 *et seq.*);
- (3) Breach of Implied Warranty in Violation of Song-Beverly Consumer Warranty Act (Cal. Civil Code §§ 1790 *et seq.*);
- (4) Breach of Warranty in Violation of Magnuson-Moss Warranty Act (15 U.S.C. §§ 2310 *et seq.*); and
- (5) Breach of Implied Warranty in Violation of Magnuson-Moss Warranty Act (15 U.S.C. §§ 2310 *et seq.*).

**(Amount to Exceed \$25,000)**

**Jury Trial Demanded**

1 Plaintiff MATTHEW TREINISH (“Plaintiff”), individually and on behalf of all others  
2 similarly situated, alleges as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this class action Complaint against Defendant IFIT INC.  
5 (hereinafter “Defendant”) to stop Defendant’s practice of selling warranties with its treadmills,  
6 which they have no intention of honoring, and to obtain redress for a class of consumers (“Class  
7 Members”) who were misled by Defendants within the applicable statute of limitations period.

8 2. Defendants represented to consumers that a warranty would accompany the  
9 purchase of its treadmills (“the Class Products”), whereby Defendant would repair any of the  
10 Class Products for a certain period of time at no charge to consumers.

11 3. Warranties are of particular value to consumers because they provide a guarantee  
12 of the value of a good after it is purchased.

13 4. Plaintiff and other consumers similarly situated were exposed to these  
14 representations.

15 5. Defendants misrepresented to Plaintiff and others similarly situated by failing to  
16 disclose in either their representations or the contract itself that Defendants would not honor the  
17 warranty.

18 6. Defendants’ misrepresentations to Plaintiff and others similarly situated induced  
19 them to purchase Defendants’ Class Products.

20 7. Defendants took advantage of Plaintiff and similarly situated consumers unfairly  
21 and unlawfully.

22 **THE PARTIES**

23 8. Plaintiff MATTHEW TREINISH is a citizen and resident of the State of  
24 California, County of Los Angeles.

25 9. Defendant IFIT INC. is a corporation that does business in California under the  
26 fictitious name NORDICTRACK, including within Los Angeles County, and is incorporated in  
27 Delaware and headquartered in Logan, Utah.



1 from the date of purchase.

2 17. On at least three occasions, Plaintiff's treadmill came to a complete stop while  
3 he was running on it at full speed, and would not turn back on.

4 18. Plaintiff has contacted Defendant to have his treadmill fixed numerous times.  
5 Each time Defendant agreed to send an employee to service the treadmill, however this  
6 process took four weeks or longer each time Plaintiff's treadmill broke.

7 19. As a result, Plaintiff has had significant periods of time where he cannot use the  
8 treadmill which he paid valuable consideration for.

9 20. The repeated malfunctioning of Plaintiff's treadmill constitutes a breach of  
10 Defendant's warranty to Plaintiff.

11 21. Had Plaintiff known that Defendant would breach its warranty, he would not  
12 have purchased the Commercial 2950 model treadmill from Defendant.

13  
14 **CLASS ACTION ALLEGATIONS**

15 22. Plaintiff brings this action, on behalf of himself and all others similarly situated,  
16 and thus, seeks class certification under California Code of Civil Procedure Rule 382, et seq.  
17 and Cal. Civil Code § 1781, et seq.

18 23. The class Plaintiff seeks to represent (the "Class") is defined as follows:

19 All consumers, who, between the applicable statute of limitations  
20 and the present, purchased Defendant's Class Products, and had  
21 that Class Product come to a complete stop while it was running,  
and would not turn back on.

22 24. As used herein, the term "Class Members" shall mean and refer to the members  
23 of the Class described above.

24 25. Excluded from the Class are Defendant, its affiliates, employees, agents, and  
25 attorneys, and the Court.

26 26. Plaintiff reserves the right to amend the Class, and to add additional subclasses,  
27 if discovery and further investigation reveals such action is warranted.

1           27.     Upon information and belief, the proposed class is composed of thousands of  
2 persons. The members of the class are so numerous that joinder of all members would be  
3 unfeasible and impractical.

4           28.     No violations alleged in this complaint are contingent on any individualized  
5 interaction of any kind between class members and Defendant.

6           29.     Rather, all claims in this matter arise from the identical, false, affirmative written  
7 statements that Defendant would provide warranties to the Class Members, when in fact, such  
8 representations were false.

9           30.     There are common questions of law and fact as to the Class Members that  
10 predominate over questions affecting only individual members, including but not limited to:

- 11                   (a)     Whether Defendants engaged in unlawful, unfair, or deceptive business  
12 practices in advertising warranties with its products to Plaintiff and other  
13 Class Members with no intention of honoring them;
- 14                   (b)     Whether Defendants made misrepresentations with respect to their  
15 warranties for their products;
- 16                   (c)     Whether Defendants violated California Bus. & Prof. Code § 17200, *et*  
17 *seq.*, *et seq.*, California Civ. Code § 1790, *et seq.*, and 15 U.S.C. § 2310,  
18 *et seq.*;
- 19                   (d)     Whether Plaintiff and Class Members are entitled to equitable and/or  
20 injunctive relief;
- 21                   (e)     Whether Defendants' unlawful, unfair, and/or deceptive practices harmed  
22 Plaintiff and Class Members; and
- 23                   (f)     The method of calculation and extent of damages for Plaintiff and Class  
24 Members.

25           31.     Plaintiff is a member of the class he seeks to represent

26           32.     The claims of Plaintiff are not only typical of all class members, they are  
27 identical.  
28

## FIRST CAUSE OF ACTION

38. Plaintiff incorporates by reference each allegation set forth above.

39. Actions for relief under the unfair competition law may be based on any business act or practice that is within the broad definition of the UCL. Such violations of the UCL occur as a result of unlawful, unfair or fraudulent business acts and practices. A plaintiff is required to provide evidence of a causal connection between a defendant's business practices and the alleged harm--that is, evidence that the defendant's conduct caused or was likely to cause substantial injury. It is insufficient for a plaintiff to show merely that the defendant's conduct created a risk of harm. Furthermore, the "act or practice" aspect of the statutory definition of unfair competition covers any single act of misconduct, as well as ongoing misconduct.

# UNFAIR

1 UCL in that its conduct is substantially injurious to consumers, offends public policy, and is  
2 immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any  
3 alleged benefits attributable to such conduct. There were reasonably available alternatives to  
4 further Defendant's legitimate business interests, other than the conduct described herein.  
5 Plaintiff reserves the right to allege further conduct which constitutes other unfair business acts  
6 or practices. Such conduct is ongoing and continues to this date.

7 41. In order to satisfy the "unfair" prong of the UCL, a consumer must show that the  
8 injury: (1) is substantial; (2) is not outweighed by any countervailing benefits to consumers or  
9 competition; and, (3) is not one that consumers themselves could reasonably have avoided.

10 42. Here, Defendant's conduct has caused and continues to cause substantial injury  
11 to Plaintiff and members of the Class. Plaintiff and members of the Class have suffered injury  
12 in fact due to Defendant's decision to sell defective treadmills in breach of its warranty with  
13 Plaintiff and Class Members. Moreover, Plaintiff and Class Members were deprived of the use  
14 of their Class Products for significant periods of time. Thus, Defendant's conduct has caused  
15 substantial injury to Plaintiff and the members of the Class.

16 43. Moreover, Defendant's conduct as alleged herein solely benefits Defendant  
17 while providing no benefit of any kind to any consumer. Defendant warranted to Plaintiff and  
18 Class Members that it would provide them with treadmills that were free from defects. In fact,  
19 however, Defendant sold Plaintiff and Class Members treadmills which were substantially  
20 defective, in that the treadmills would shut off and come to a complete stop while in use, and  
21 would not turn back on. Thus, the injury suffered by Plaintiff and the members of the Class are  
22 not outweighed by any countervailing benefits to consumers.

23 44. Finally, the injury suffered by Plaintiff and members of the Class is not an injury  
24 that these consumers could reasonably have avoided. Plaintiff and Class Members had no way  
25 to determine that Defendant would actually sell them defective treadmills, as evidenced by  
26 Defendant's warranty that its treadmills were in fact no defective. Plaintiff and Class Members  
27 relied on this warranty, and changed their positions by purchasing Class Products. Defendants  
28



1 failed to take reasonable steps to inform Plaintiff and class members that its treadmills were  
2 defective. As such, Defendants took advantage of Defendants' position of perceived power in  
3 order to deceive Plaintiff and the Class. Therefore, the injury suffered by Plaintiff and members  
4 of the Class is not an injury which these consumers could reasonably have avoided.

5 45. Thus, Defendants' conduct has violated the "unfair" prong of California Business  
6 & Professions Code § 17200.

### 7 **FRAUDULENT**

8 46. California Business & Professions Code § 17200 prohibits any "fraudulent ...  
9 business act or practice." In order to prevail under the "fraudulent" prong of the UCL, a  
10 consumer must allege that the fraudulent business practice was likely to deceive members of  
11 the public.

12 47. The test for "fraud" as contemplated by California Business and Professions  
13 Code § 17200 is whether the public is likely to be deceived. Unlike common law fraud, a §  
14 17200 violation can be established even if no one was actually deceived, relied upon the  
15 fraudulent practice, or sustained any damage.

16 48. Here, not only were Plaintiff and the Class members likely to be deceived, but  
17 these consumers were actually deceived by Defendant. Such deception is evidenced by the fact  
18 that Defendant sold Plaintiff and Class Members defective treadmills despite warranting that its  
19 treadmills were in fact defect-free. For the same reason, it is likely that Defendant's fraudulent  
20 business practice would deceive other members of the public.

21 49. As explained above, Defendant deceived Plaintiff and other Class Members by  
22 falsely warranting that its treadmills were defect-free.

23 50. Thus, Defendants' conduct has violated the "fraudulent" prong of California  
24 Business & Professions Code § 17200.

### 25 **UNLAWFUL**

26 51. California Business and Professions Code Section 17200, et seq. prohibits "any  
27 unlawful...business act or practice."  
28

3            53.        Such conduct constitutes breach of warranty in violation of Cal. Civ. Code §  
4        1790. Defendant's conduct therefore caused and continues to cause economic harm to Plaintiff  
5        and Class Members.

8           55. Defendant has thus engaged in unlawful, unfair, and fraudulent business acts  
9   entitling Plaintiff and Class Members to judgment and equitable relief against Defendants, as  
10 set forth in the Prayer for Relief. Additionally, pursuant to Business and Professions Code  
11 section 17203, Plaintiff and Class Members seek an order requiring Defendants to immediately  
12 cease such acts of unlawful, unfair, and fraudulent business practices and requiring Defendant  
13 to correct its actions.

17 85. Plaintiff incorporates by reference each allegation set forth above.

87. Defendant, through Seller and/or other authorized dealerships, have been unable to repair said defects in a reasonable number of attempts.

27 89. Defendant has willfully violated the provisions of this act by knowing of its

obligations to refund or replace Plaintiff's treadmill, but failing to fulfill them.

### **THIRD CAUSE OF ACTION**

#### **Breach of Implied Warranty In Violation of the Song-Beverly Consumer Warranty Act (Cal. Civ. Code § 1790, *Et Seq.*)**

90. Plaintiff incorporates by reference each allegation set forth above.

91. The treadmill purchased by Plaintiff was subject to an implied warranty of merchantability as defined in Cal. Civ. Code §1790 running from the Defendants to the intended consumer, Plaintiff herein.

92. Defendant is a suppliers of consumer goods as persons engaged in the business of making a consumer product directly available to Plaintiff.

93. Defendant is prohibited from disclaiming or modifying any implied warranty under Cal. Civ. Code §1790.

94. Pursuant to Cal. Civ. Code §1790, Plaintiff's treadmill was impliedly warranted to be fit for the ordinary use for which the treadmill was intended.

95. The treadmill was warranted to pass without objection in the trade under the contract description, and was required to conform to the descriptions of the treadmill contained in the contracts and labels.

96. The above described defects in the treadmill caused it to fail to possess even the most basic degree of fitness for ordinary use.

97. As a result of the breaches of implied warranty by Defendant, Plaintiff have suffered and continue to suffer various damages.

### **FOURTH CAUSE OF ACTION**

#### **Breach of Warranty In Violation of the Magnuson-Moss Warranty Act (15 U.S.C. § 2310, *Et Seq.*)**

98. Plaintiff incorporates by reference each allegation set forth above.

99. Plaintiff is a purchaser of a consumer product who received the treadmill during the duration of a written warranty period applicable to the treadmill and who is entitled by the

1 terms of the written warranty to enforce against Defendant the obligations of said warranty.

2 100. Defendant is a person engaged in the business of making a consumer product  
3 directly available to Plaintiff.

4 101. Defendant, i.e., seller, are an authorized dealership/agent designed to perform  
5 repairs on treadmills under Defendant's warranties.

6 102. The Magnuson-Moss Warranty Act, Chapter 15 U.S.C.A., Section, 2301 et. Seq.  
7 ("Warranty Act") is applicable to Plaintiff's Complaint in that the treadmill was manufactured,  
8 sold and purchased after July 4, 1975, and costs in excess of ten dollars (\$10.00).

9 103. Plaintiff's purchase of the treadmill was accompanied by written warranties for  
10 any non-conformities or defects in materials or workmanship, comprising an undertaking in  
11 writing in connection with the purchase of the treadmill and take remedial action free of charge  
12 to Plaintiff with respect to the treadmill in the event that the treadmill failed to meet the  
13 specifications set forth in said undertaking.

14 104. Said warranties were the basis of the bargain of the contract between the Plaintiff  
15 and Defendant for the sale of the treadmill to Plaintiff.

16 105. Said purchase of Plaintiff's treadmill was induced by, and Plaintiff relied upon,  
17 these written warranties.

18 106. Plaintiff has met all of Plaintiff's obligations and preconditions as provided in  
19 the written warranties.

20 107. As a direct and proximate result of Defendant's failure to comply with its express  
21 written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. § 2310(d),  
22 Plaintiff is entitled to bring suit for such damages and other equitable relief.

23 **FIFTH CAUSE OF ACTION**

24 **Breach of Implied Warranty In Violation of the Magnuson-Moss Warranty Act**

25 **(15 U.S.C. § 2310, *Et Seq.*)**

26 108. Plaintiff incorporates by reference each allegation set forth above.

27 109. The alignment purchased by Plaintiff was subject to an implied warranty of  
28

1 merchantability as defined in 15 U.S.C. § 2301(7).

2 110. Defendant is a supplier of consumer goods as a person engaged in the business  
3 of making a consumer product directly available to Plaintiff.

4 111. Defendant is prohibited from disclaiming or modifying any implied warranty  
5 when making a written warranty to the consumer or when Defendant has entered into a contract  
6 in writing within ninety (90) days of purchase to perform services relating to the maintenance  
7 or repair of a treadmill.

8 112. Pursuant to 15 U.S.C. § 2308, Plaintiff's treadmill was impliedly warranted to be  
9 substantially free of defects and non-conformities in both material and workmanship, and  
10 thereby fit for the ordinary purpose for which the treadmill was intended.

11 113. The treadmill was warranted to pass without objection in the trade under the  
12 contract description, and was required to conform to the descriptions of the treadmill contained  
13 in the contracts and labels.

14 114. The above described defects in the treadmill render the treadmill unfit for the  
15 ordinary and essential purpose for which the treadmill was intended.

16 115. As a result of the breaches of implied warranty by Defendant, Plaintiff has  
17 suffered and continues to suffer various damages.

18 **MISCELLANEOUS**

19 116. Plaintiff and Class Members allege that they have fully complied with all  
20 contractual and other legal obligations and fully complied with all conditions precedent to  
21 bringing this action or all such obligations or conditions are excused.

22 **PRAYER FOR RELIEF**

23 117. Plaintiff, on behalf of himself and the Class, requests the following relief:

- 24 (a) An order certifying the Class and appointing Plaintiff as Representative  
25 of the Class;
- 26 (b) An order certifying the undersigned counsel as Class Counsel;
- 27 (c) An order requiring Defendant, at their own cost, to notify all Class  
28

- Members of the unlawful and deceptive conduct herein;
- (d) An order requiring Defendant to engage in corrective advertising regarding the conduct discussed above;
  - (e) Actual damages suffered by Plaintiff and Class Members as applicable from being induced to call Defendants under false pretenses;
  - (f) Punitive damages, as allowable, in an amount determined by the Court or jury;
  - (g) Any and all statutory enhanced damages;
  - (h) All reasonable and necessary attorneys' fees and costs provided by statute, common law or the Court's inherent power;
  - (i) Pre- and post-judgment interest; and
  - (j) All other relief, general or special, legal and equitable, to which Plaintiff and Class Members may be justly entitled as deemed by the Court.

**REQUEST FOR JURY TRIAL**

118. Plaintiff requests a trial by jury as to all claims so triable.

Dated: June 8, 2022

Respectfully submitted,

LAW OFFICES OF TODD M. FRIEDMAN , PC

By: Todd M. Friedman  
TODD M. FRIEDMAN, ESQ.

Attorneys for Plaintiff